

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. [2014-363-C](#) - ORDER NO. [Order No.]
DECEMBER 11, 2014

IN RE:	Application of Talk America Services, LLC)	HEARING EXAMINER
	for a Certificate of Public Convenience and)	PROPOSED ORDER
	Necessity to Operate as a Competitive Local)	APPROVING
	Exchange and Long Distance Carrier in)	APPLICATION AND
	Those Areas of the State of South Carolina)	GRANTING
	Where the Windstream (WIN) Companies)	CERTIFICATE
	are Currently Authorized and for Approval of)	
	the Transfer of Residential Local and Long)	
	Distance Customers of the WIN Companies)	
	to Talk America Services, LLC)	

Introduction:

Pursuant to S.C. Code Ann. §§ 58-9-280 and 58-9-310, this matter comes before the Public Service Commission of South Carolina ("Commission") on the Application of Talk America Services, LLC ("TAS", "Applicant," or "Company") for a Certificate of Public Convenience and Necessity to provide competitive local exchange and interexchange telecommunications services within South Carolina where certain Windstream Corporation subsidiaries ("WIN Companies") are currently certificated. The Application stems from a nationwide consolidation of Windstream Corporation facilities and residential customers, and TAS further requests approval to subsume those residential and long distance customers of the WIN Companies, including any necessary waivers of the slamming prohibitions contained in S.C. Code Ann. § 58-3-230. TAS also seeks permission to apply the procedures authorized for flexible regulation of local

exchange service as granted to NewSouth Communications by Order No. 98-165 in Docket No. 1997-467-C. Last, the Company asks for its interexchange service offerings to be subject to alternative regulation, pursuant to S.C. Code Ann. § 58-9-585, as was first granted by the Commission in Order Nos. 95-1734 and 96-55 issued in Docket No. 1995-661-C as modified by Order No. 2001-997 in Docket No. 2000-407-C.

By letter, the Commission instructed the Applicant to publish, one time, a prepared Notice of Filing in a newspaper of general circulation in the areas affected by the Application. The intent of the Notice of Filing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in this proceeding. The Company complied with this instruction and provided the Commission with proof of publication of the Notice of Filing.

Stipulation with the South Carolina Telephone Coalition:

A Petition to Intervene was filed by the South Carolina Telephone Coalition ("SCTC"). Subsequently, counsel for SCTC filed with the Commission a Stipulation. As a result of this agreement, SCTC withdrew its opposition provided that the conditions contained in the Stipulation are met. A copy of the Stipulation is attached as Order Exhibit 1.

Position of the Office of Regulatory Staff:

On October 17, 2014, counsel for the South Carolina Office of Regulatory Staff ("ORS") filed a letter with the Commission setting out that it had reviewed the Application and did not oppose the Commission granting the Application. The ORS also sought to be excused from the hearing in the Docket. The Applicant did not object to the

ORS request, and the Hearing Examiner, appointed by Order No. 2014-754 (September 23, 2014), granted ORS's request by Directive dated October 23, 2014. The ORS correspondence of October 17, 2014, is attached as Order Exhibit 2.

Hearing:

A hearing was commenced on November 19, 2014, at 10:00 a.m., in the Commission's offices. The Honorable Josh Minges, Hearing Examiner, presided. Burnet R. Maybank, Esquire, and Jim Rourke, Esquire, represented the Company. Jeffery W. Small, Vice President of the Applicant's parent company, Communications Sales & Leasing, Inc. ("CSL"), appeared by video and testified in support of the Application.

Purpose for the Application:

According to the Application, the nationwide Windstream Corporation, headquartered in Arkansas, is undergoing a *pro forma* transaction that involves a transfer from a corporation to wholly owned subsidiaries, and a consolidation of wholly owned subsidiary companies. To accomplish this change, Windstream Corporation established CSL as a subsidiary that will acquire Windstream Corporation's network assets, among other things, in a real estate investment trust and then lease them back to the parent company on a long term basis. However, none of the assets in South Carolina will be transferred to CSL, and Windstream Corporation will continue to own and operate these South Carolina assets. CSL is a Delaware Corporation authorized to do business in South Carolina. After this acquisition, testimony indicates that Windstream Corporation

and CSL will sever their corporate ties and enter into a commercial only relationship between the two companies.

CSL, in turn, established TAS as a sole member limited liability company for the purpose of acquiring the residential local exchange and long distance customers of the Windstream Corporation's regulated subsidiaries currently providing those services in South Carolina, which are the "WIN Companies." The transfer of customers between the WIN Companies and TAS will not include business customers. TAS is also a Delaware Corporation authorized to do business in South Carolina. The subsidiaries comprising the WIN Companies include:

1. Intellifiber Networks, Inc. is authorized to provide local exchange and interexchange telecommunications services pursuant to Order No. 2001-1120 issued in Docket No. 2001-375-C on December 18, 2001.
2. McLeodUSA Telecommunications Services, LLC is authorized to provide local exchange telecommunications services pursuant to Order No. 2001-648 issued in Docket No. 2001-113-C on July 18, 2001 and interexchange telecommunications services pursuant to Order No. 97-944 issued in Docket No. 97-207-C on November 4, 2004.
3. Network Telephone Corp. is authorized to provide local exchange and interexchange telecommunications services pursuant to Order Nos. 1999-225 and 1999-677 issued in Docket No. 98-590-C on March 29, 1999 and September 27, 1999, respectively.

4. PAETEC Communications, Inc. is authorized to provide interexchange telecommunications services pursuant to Order No. 1999-60 issued in Docket No. 98-404-C on January 26, 1999.

5. Talk America, Inc. is authorized to provide local exchange telecommunications services pursuant to Order No. 97-670 issued in Docket No. 97-162-C on August 5, 1997 and interexchange telecommunications services pursuant to Order No. 92-479 issued in Docket No. 92-126-C on June 19, 1992.

6. The Other Phone Company is authorized to provide local exchange and interexchange telecommunications services pursuant to Order No. 1999-19 issued in Docket No. 98-443-C on January 7, 1999.

7. US LEC of South Carolina, LLC is authorized to provide local exchange and interexchange telecommunications services pursuant to Order No. 97-957 issued in Docket No. 97-300-C on November 10, 1997.

8. Windstream Communications, Inc. is authorized to provide local exchange and interexchange telecommunications services pursuant to Order No. 2006-186 issued in Docket No. 2005-399-C on March 28, 2006.

9. Kentucky Data Link, Inc. is authorized to provide local exchange and interexchange telecommunications services pursuant to Order No. 2008-345 issued in Docket No. 2008-16-C on May 7, 2008.

10. Norlight Telecommunications, Inc. is authorized to provide local exchange and interexchange telecommunications services pursuant to Order No. 2008-642 issued in Docket No. 2008-208-C on September 22, 2008.

11. Windstream NuVox, Inc. is authorized to provide local exchange and interexchange telecommunications services pursuant to Order No. 98-395 issued in Docket No. 98-129-C on May 29, 1998.

Testimony of Jeffery W. Small:

At the hearing, Mr. Small testified that once the restructuring of the WIN Companies' competitive local exchange and long distance residential services is completed, TAS will then offer those services along with internet service in the areas where they are currently offered. TAS intends to resell the Win Companies' services through standard three year contracts. The transaction is projected to affect approximately 120 non-rural customers, principally from Windstream Communications, Inc., PAETEC Communications, Inc., and Windstream NuVox, Inc. Other incumbent providers that are not affiliated with the Windstream Corporation in those WIN Companies service territories include AT&T, Frontier, and CenturyLink.

Mr. Small further testified that customers affected by the restructuring will receive thirty (30) days' notice prior to the transfer, and the only impact those customers will experience is a change in billing provider and call center support. Additionally, customers will experience no change in the terms, conditions, and rates from their current CLEC subsidiaries with the same level of managerial and technical capabilities. TAS will rely on the WIN Companies' employees for ordering, provisioning, installation, and maintenance. Its services will be available on a full-time basis, twenty-four hours a day, seven days a week. However, Customers will be billed by the Applicant, and TAS will

have its own marketing employees and customer service through call center based support.

Mr. Small also stated that the services provided by the Applicant will meet all of the Commission's requirements, and it will not adversely impact the availability of affordable local exchange services. Last Mr. Small testified that TAS is financially capable of providing the services for which it seeks certification.

Waivers of Regulations:

The Applicant has requested that the Commission waive any applicable anti-slamming requirements of S.C. Code Ann. § 58-3-230 with respect to the transfer of customers from the WIN Companies to TAS. Under that provision, a telephone utility may not submit a change request for a customer's utility service until the customer's authorization for the change is obtained by using marketing or anti-slamming guidelines approved by the appropriate federal and state regulatory agencies. However, the Company has agreed in Mr. Small's testimony to provide notice to each customer affected by the Application prior to the proposed transfer in conformity with the FCC's rules. As such, we find that no waiver is necessary because the Company will comply with the provisions of the statute. The proposed notice to customers that was included with the Application is attached hereto as Order Exhibit 3.

After full consideration of the applicable law, the Company's Application, and the evidence of record presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. The Company is a duly organized corporation which exists under the laws of the State of Delaware and has been authorized to do business in the State of South Carolina by the Secretary of State.

2. The Company intends to resell the services of the WIN Companies as a provider of local exchange and interexchange telecommunications services and wishes to provide its services in South Carolina.

4. The Company has the managerial, technical, and financial resources to provide the services as described in its Application. S.C. Code Ann. § 58-9-280 (B)(1).

5. The Commission finds that the Company's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. § 58-9-280 (B)(3).

6. The Commission finds that the Company will support universally available telephone service at affordable rates. S.C. Code Ann. § 58-9-280 (B)(4).

7. The Commission finds that the services to be provided by the Company, regardless of the technology used to provide those services, will meet the service standards of the Commission. S.C. Code Ann. § 58-9-280 (B)(2).

8. The Commission finds that the provision of local exchange service by the Company “does not otherwise adversely impact the public interest”. S.C. Code Ann. § 58-9-280 (B)(5).

9. Following execution of the Stipulation, the SCTC withdrew its opposition to the Application.

10. The ORS was permitted to be excused from the hearing and the fact that it did not oppose granting the Application herein is duly noted.

CONCLUSIONS OF LAW

1. After the proposed restructuring of the WIN Companies and transfer of residential customers, TAS will meet the definition of a “telephone utility” as defined by S.C. Code Ann. § 58-9-10(6).

2. The Commission concludes that the Company possesses the managerial, technical, and financial resources to provide the competitive local exchange and interexchange telecommunications services as described in the Application.

2. The Commission concludes that the Company's "provision of service will not adversely impact the availability of affordable local exchange service.”

3. The Commission concludes that the Company will participate in the support of universally available telephone service at affordable rates to the extent that the Company may be required to do so by the Commission.

4. The Commission concludes that the Company will comply with required surcharges for 911 and dual party relay service, and remit those funds to the appropriate authorities.

5. The Commission concludes that the Company will provide services that will meet the service standards of the Commission.

7. The Commission concludes that the provision of local exchange services by the Company will not otherwise adversely impact the public interest.

8. Based on the findings of fact and conclusions of law stated herein, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to the Company to provide competitive local exchange services. In addition, the Company is granted authority to provide intrastate interexchange services.

9. The terms of the Stipulation between the Company and SCTC are approved and adopted as a part of this Order. Any proposal to provide local telecommunications service to rural service areas, regardless of the technology employed, is therefore subject to the terms of the Stipulation.

10. The Commission concludes the Company's local exchange telecommunications services, regardless of the technology employed, shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communications by Order No. 98-165 in Docket No. 1997-467-C. Specifically, the Commission adopts for the Company's competitive intrastate local exchange services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels that will have been previously approved by the Commission. Further, the Company's local exchange service tariff filings are presumed valid upon filing, subject to the Commission's right within thirty (30) days to institute an investigation of the tariff filing, in which case the tariff filing would be suspended pending further order of the Commission. Further, any such tariff filings will be subject to the same monitoring process as similarly situated competitive local exchange carriers.

11. The Commission concludes that the Company's intrastate interexchange business telecommunications services shall be regulated in accordance with the principles and procedures established for alternative regulation of business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 1995-661-C. The Commission has previously granted this "alternative regulation" to competitive intrastate interexchange carriers operating within South Carolina, and the Commission concludes that the competitive marketplace requires the Commission to allow this flexible regulation to those carriers who request it. Specifically, the Commission-approved alternative regulation allows business service offerings, including consumer card services and operator services, to be subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 1995-661-C.

12. We conclude that, specific to the facts of this Order and to the extent that the Commission has jurisdiction, the proposed customer notice will satisfy the South Carolina anti-slamming provisions of S.C. Code Ann. § 58-3-230.

13. We conclude that TAS has sufficient financial resources, as testified to by Mr. Small, to not require the bond requirements of 10 S.C. Code Ann. Regs. 103-607 and the Commission orders pertaining to bond requirements.

14. TAS shall comply with the verification regulations governing change of preferred carriers as established by the Federal Communications Commission.

15. TAS shall comply with S.C. Code Ann. § 58-9-300 (Supp. 2013) entitled "Abandonment of Service." Additionally, to the extent applicable, TAS agrees to adhere

to the FCC's Rule 47 C.F.R. § 64.1190 and 64.1130 regarding preferred carrier freezes and the requirement that the form of the written authorization for the institution of the freeze be a separate or easily separable document. Prior to abandonment of service, the Company shall remove any preferred carrier freeze so as to enable consumers to seamlessly transfer their telephone numbers to another provider.

16. The Applicant is authorized to conduct business in South Carolina as Talk America Services, LLC.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. A Certificate of Public Convenience and Necessity is granted to TAS to provide competitive local exchange telecommunications services and interexchange telecommunications services, on a facilities-based or resold basis in the current area served by the WIN Companies.

2. The terms of the Stipulation between the Company and the SCTC are approved and adopted as part of this Order. The Stipulation is attached as Order Exhibit

1. Any proposal to provide competitive local exchange telecommunications services to rural service areas is subject to the terms of the Stipulation.

3. The Company shall file, if it has not already done so by the date of issuance of this Order, its revised local tariffs. The revised tariffs should be electronically filed in a text searchable PDF format using the Commission's DMS System (<http://dms.psc.sc.gov>). An additional copy should be sent via email to etariff@psc.sc.gov to be included in the Commission's ETariff System (<http://etariff.psc.sc.gov>). Future revisions to the tariffs should be made using the ETariff

System. The revised tariffs shall be consistent with the findings of this Order and agreements with other parties to this case. The revised tariffs shall be consistent with the Commission's Rules and Regulations, and shall be filed as stated within 30 days of receipt of this Order.

4. TAS is required to comply with Title 23, Chapter 47, South Carolina Code of Laws Annotated which governs the establishment and implementation of a "Public Safety Communications Center," which is more commonly known as a "911 system" or "911 service." Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs the Company to contact the appropriate authorities regarding 911 service in the counties and cities where the Company will be operating. Contact with the appropriate authorities is to be made before providing voice or dial tone telephone service in South Carolina. Located on the homepage of this Commission's website at www.psc.sc.gov is a "Quick Link" column. One of the tabs in this column is called "E-911 Information." Clicking on this tab will provide a list of county and city E-911 coordinators with contact information. By this Order and prior to providing voice or dial-tone services within South Carolina, the Applicant is directed to contact the 911 Coordinator in each county, as well as the 911 Coordinator in each city where the city has its own 911 system, and shall provide information regarding the Company's operations as required by the 911 system.

5. The Applicant shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipts report will necessitate the filing of South Carolina specific information. Therefore, the Company shall keep financial records on its South Carolina operations to comply with the annual report and gross receipts filings. The proper form for filing annual financial information can be found at the Commission's website or at the ORS's website at www.regulatorystaff.sc.gov. The title of this form is "Telecommunications Company Annual Report." This form shall be utilized by the Applicant to file annual financial information as directed by the Commission or ORS and shall be filed no later than April 1st.

6. Commission gross receipts forms are due to be filed no later than August 31st of each year. The proper form for filing gross receipts information can be found at the ORS website www.regulatorystaff.sc.gov and the appropriate form is entitled "Gross Receipts Form."

7. Each telecommunications company certified in South Carolina is required to file annually with the ORS the South Carolina Universal Service Fund ("USF") Contribution Worksheet, which may be found on the ORS's website at www.regulatorystaff.sc.gov. This worksheet provides ORS information required to determine each telecommunications company's liability to the State USF fund. The State USF worksheet is due to be filed annually no later than July 1st with the ORS.

8. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on

a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission and ORS in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. The Company shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The "Authorized Utility Representative Information" form can be found at the ORS website at www.regulatorystaff.sc.gov. This form shall be utilized for the provision of this information to the Commission and ORS. Further, the Company shall promptly notify the Commission and ORS in writing if the representatives are replaced. If the Company changes or modifies its name, the Company shall file such changes with the Commission for approval.

9. The Company shall conduct its business in compliance with Commission decisions and orders, both past and future.

10. The Commission adopts a rate design for the Company's residential interexchange services which includes maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

11. The Company shall not adjust its residential interexchange rates for end users below the approved maximum level without notice to the Commission and to the

public. The Company shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential interexchange services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. § 58-9-540 (Supp. 2013).

12. The Commission determines that the Company's intrastate interexchange business telecommunications services shall be regulated in accordance with the principles and procedures established for alternative regulation of business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. However, pursuant to Order No. 2001-997 (Docket No. 2000-407-C), this Commission has modified alternative regulation by the re-imposition of rate caps with regard to certain “operator-assisted calls” where a customer uses a local exchange carrier's calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the

flat per-minute rate associated with these calls. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing.

13. The Commission also determines that the Company's local exchange telecommunications services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communications by Order No. 1998-165 in Docket No. 1997-467-C.

14. The Applicant is authorized to conduct business in South Carolina as Talk America Services, LLC.

15. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:

Nikiya Hall, Chairman

ATTEST:

Swain E. Whitfield, Vice Chairman
(SEAL)